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Kaylin Robinson; Pro Se.

David L. Church; Riverton City Attorney; Attorney for Plaintiff-Respondent.

Recommended Citation

Brief of Respondent, *Riverton v. Robinson*, No. 870455 (Utah Court of Appeals, 1987).

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BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 870455-CA

CITY OF RIVERTON,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	
)	
KAYLIN ROBINSON,)	Case No. 870455-CA
)	
Defendant-Appellant.)	

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from the Order of the Fifth
Circuit Court, State of Utah, County
of Salt Lake, Judge Jones

KAYLIN ROBINSON, pro se
Appellant
P.O. Box 213
6000 West 13000 South
Riverton, Utah

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COURT OF APPEALS

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STATEMENT OF JURISDICTION

This is an appeal from the Fifth Circuit Court, Salt Lake City, Utah. Jurisdiction of the Court is pursuant to Utah Code Annotated, Section 78-2(a)-3, 1953, as amended.

ISSUES PRESENTED FOR REVIEW

1. Whether the Circuit Court Judge erred in allowing the introduction of evidence seized by the co-employees of Defendant.
2. Whether there was sufficient evidence to convict Defendant.

STATUTORY PROVISIONS

Utah Code Annotated, 1953, as amended, Section
77-35-12(b)(2):

(b) Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion. The following shall be raised at least five days prior to the trial:

- (2) Motions concerning the admissibility of evidence.

STATEMENT OF THE CASE

Defendant, Kaylin Robinson, was charged by citation on the 27th day of February, 1987, with theft of \$4.75 worth of magazines from her place of employment. An information was signed the 12th day of March, 1987, with the City of Riverton as the charging entity. A jury trial was held in the Riverton Justice of the Peace Court on the 9th day of April, 1987.

Defendant was convicted of a class B misdemeanor. Defendant appealed to the Fifth Circuit Court of Salt Lake County. A trial was held before Judge Jones on the 3rd day of August, 1987. On the day of trial, Defendant presented the Judge with a motion styled a Demand for Suppression of Evidence which was dated the 1st day of August, 1987, the Court refused to consider the Motion for Suppression of Evidence. Defendant was tried and found guilty of theft, a class B misdemeanor, and filed a notice of appeal to the Utah Court of Appeals on September 9, 1987.

SUMMARY OF ARGUMENTS

Defendant's Motion to Suppress was properly denied as not being timely made. The Utah Rules of Criminal Procedure provide that a motion to suppress evidence must be filed at least five days before trial. Defendant's Motion was not filed five days before trial. The Judge in his discretion properly refused to consider the motion.

Defendant's motion to suppress evidence was without merit. The property was not seized by the the sheriff's department or any other governmental entity, but was seized by private citizens, employees of Defendant's employer Southland Corporation, and was held by the employees of Southland Corporation, not the County Sheriff or any other governmental entity.

Sufficient evidence was presented at trial to the Judge to find the Defendant guilty. Witnesses testified at trial who

clearly indicated that Defendant had taken the property of another with the apparent intent to deprive the true owner of its value and that Defendant admitted as much to these witnesses.

ARGUMENT

POINT I

THE EVIDENCE COMPLAINED ABOUT BY DEFENDANT WAS APPROPRIATELY ADMITTED AT TRIAL

Defendant argues that certain evidence should not have been considered by the Circuit Court Judge because it was illegally seized and safeguarded. The Defendant challenged the evidence by a Motion to Suppress. Utah Code Annotated, 77-35-12(b)(2) provides that a motion concerning the admissibility of evidence must be filed at least five days before trial. Defendant's Motion to Suppress Evidence was filed on the date of trial (Record on appeal, page 58). The Judge properly refused to consider this motion. Defendant, although not represented by counsel, should have known about this rule. She had previously filed a motion to suppress in the justice of peace court (record, page 26), which motion had been filed timely, and had been argued before the Justice of the Peace (record, page 32). This indicates that Defendant, although appearing pro se, was aware of the rules or should have been aware of the rules requiring her to file her motion timely.

Even if the motion had been timely filed, Plaintiff's assertions in her brief regarding the inadmissability of the

evidence are without merit. The protection of the Fourth Amendment to the United States Constitution and the Utah Constitution against unreasonable searches and seizures are restraints only upon the activities of governmental entities and governmental authority and are not applicable to searches and seizures by persons other than governmental officers and agents. See State v. Newbold, 581 P.2d 991, (Utah 1972).

Defendant in her brief admits that the evidence in question was seized by a private citizen (Defendant's brief, page 3, point I). There was no search conducted in violation of either the Utah or the United States Constitutions. The evidence was taken by private citizens, kept by private citizens, and produced at trial based on the testimony of the private citizens.

POINT II

SUFFICIENT EVIDENCE EXISTED TO SUSTAIN THE CONVICTION OF
DEFENDANT REGARDLESS OF THE ADMISSION OF THE EVIDENCE
ABOUT WHICH DEFENDANT COMPLAINS.

At trial, the City called three witnesses, all fellow employees of Defendant, who observed Defendant at the time of the theft and talked to her afterward. Even if this Court ignores the evidence about which Defendant is complaining, sufficient evidence was introduced at trial to uphold the Judge's verdict of Plaintiff's guilt.

An appeals court should not overturn the verdict of the trial judge on the grounds of insufficient evidence unless it appears from the record that his decision was clearly erroneous.

(See State v. Walker, 743 P.2d 121 (1987)). The clearly erroneous standard of review requires that the appellate court find that the court's verdict is against the "clear weight of the evidence" or the court "reaches a definite and firm conviction that a mistake has been made." State vs. Walker, Supra. The testimony of the witnesses called by the City provide a sufficient basis for the Judge's verdict under this standard of review.

CONCLUSION

The judgment of the Circuit Court of Defendant's guilt should be upheld. Defendant's allegations concerning the search and seizure were not timely made, are without merit, and the evidence received, even if erroneously considered by the Judge, does not constitute the main body of evidence against Defendant upon which the Judge relied to convict Defendant of theft, a Class B misdemeanor.

DATED this 19th day of February, 1988.



DAVID L. CHURCH
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of February, 1988, I caused four copies of the foregoing Brief of Plaintiff-Respondent, to be mailed, postage prepaid, to Kaylin Robinson, P.O. Box 213, 6000 West 13000 South, Riverton, Utah.


